



Temporary Agency Work in the Russian Federation

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I. Introduction

- The employee and the employer are the parties to labour relations (Art. 20 LC RF).
- Labour relations shall be the relations based on an agreement between an employee and an employer (Art. 15 LC RF).
- Labour relations between an employee and an employer also emerge on the ground of actual admittance of the employee to work on the consent or instructions of the employer or of a representative of the employer if a labour contract has not been properly drawn up (Art. 16 Part 3 LC RF).
- The employer shall ensure job safety and conditions meeting occupational safety and health requirements; compensate damage inflicted on employees in the course of performing their work duties; investigate work-related accidents (Art. 22, 227 LC RF).



II. Current situation in legislation relating to temporary work

- The Labour Code does not regulate temporary agency work.
- Since 2003, a legislation regulating temporary work has been in preparation.
- On 17 May 2004, the State Duma held hearings on the question of the ratification of ILO Convention № 181 on Private Employment Agencies.
- On 20 May 2011, the draft law № 451173-5 "On Introducing Amendments to Certain Legislative Acts of the Russian Federation" was passed in first reading.
- On 26 April 2013, the draft law № 451173-5 was passed in second reading.



III. Outstaffing as a way to avoid paying taxes

Criteria, developed by the courts:

1. An interdependence between the user enterprise and the secondment company. Such an interdependence can be indicated by the fact that the exclusive customer of the secondment company is the user enterprise, or by the fact that the secondment company receives payments only from the customer, or by the fact that the secondment company and the user enterprise have the same legal address and have accounts at the same bank.
2. The most of the staff of the secondment company are former employees of the user enterprise who were dismissed by the user enterprise and were then hired by the secondment company.
3. All employer duties are executed by the user enterprise, which includes the payment of wages, the regulation of working hours, and the supervision of the quality of work and of the safety at work. In such a case it can be assumed that the secondment company only alleges its employer status as a pretext.



IV. Problems in the field of social law

1. *Pensions*
 2. *Amount of social insurance contributions against accidents at work*
- The social insurance legislation for work-related accidents and occupational diseases provides 32 classes of hazard which apply according to the nature of a company's business activity.
 - The insurance rates range from 0.2 to 8.5% of the of the payroll fund (the total amount of salaries paid by an employer within a year).
 - Secondment companies belong to the first class of professional risk, which corresponds to a contribution of 0.2% of the payroll fund.
 - The user enterprises that often resort to temporary work belong to a higher class of professional risk and therefore have to pay higher contributions for their employees.



Problem: What kind of activities should be crucial for the determination of the professional risk class: the risk class of the secondment company or the risk class corresponding to the work actually performed by the temporary workers in the user enterprise? 6



V. Compensation of damages to the employee

An example from case law:

The widow of the victim of a work-related accident claimed compensation for pain and suffering (non-pecuniary damages) from the secondment company and from the user enterprise.

She pointed out that her husband had had an employment relationship with the secondment company and that he had been placed with the user enterprise to perform work as an excavator driver.

The employee's death was, according to the forensic medical examination, the result of an electric shock. The accident had happened as a result of unsatisfactory organisation of the work and insecure working conditions.

The Court concluded that the secondment company had to compensate the damages, because it had not guaranteed the safety of the employee.



VI. Draft law "On Introducing Amendments to Certain Legislative Acts of the Russian Federation"

Regulations in order to protect temporary employees:

- The draft law lists an exclusive number of cases in which the use of temporary work is allowed, such as the replacement of a permanent employee, a temporary increase in work.
- Temporary work is prohibited in enterprises with hazardous conditions. It is prohibited to assign workers to an enterprise in order to fulfill certain types of work in entities belonging to hazardous production facilities.
- Regarding to the payment of wages the principle of equal treatment with employees of the user enterprises shall apply.



VI. Draft law "On Introducing Amendments to Certain Legislative Acts of the Russian Federation"

Regulations in order to prevent the use of temporary agency work as a way to avoid paying taxes:

- A secondment company cannot be established by businesses entities that make use of the special tax regime (the simplified tax system).
- Secondment companies need an accreditation.
- Secondment companies shall pay contributions for social insurance against accidents at work according to the class of professional risk of the user enterprises in which the temporary employees are actually working.



V. Draft law "On Introducing Amendments to Certain Legislative Acts of the Russian Federation"

Regulations of the relationship between employee and user enterprise:

- During the time of a secondment the labour relation between the transferred worker and the secondment company are not suspended and a labour relation between the transferred worker and the user enterprise does not emerge.
- The employee is assigned to perform labour functions in the interest and under the control of the user enterprise.
- An accident which occurred to an employee assigned to a user enterprise shall be investigated by the commission set up in the user enterprises. The committee shall include a representative of the secondment company.
- A subsidiary responsibility of the user enterprise is established regarding the obligations of the employer (the secondment company) arising from the employment relationship, including the obligation to pay wages and other amounts payable to the employee as well as the obligation to pay insurance contributions for compulsory social insurance and mandatory pension insurance.



Thank you very much
for your attention